

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 04-CV11829 GAO

ROBERT S. STEPHENS,)
Plaintiff)
)
V.)
)
ROBERT MULHERN, individually)
and as Police Chief of)
the Town of Groton,)
PETER S. CUNNINGHAM,)
individually and as a Selectman)
for the Town of Groton,)
THOMAS D. HARTNETT individually)
and as a Selectman of the Town of)
Groton,)
DANN CHAMBERLIN individually and as))
a Selectman of the Town of Groton,)
“JOHN DOE” and)
THE TOWN OF GROTON,)
Defendants)

MOTION TO SET ASIDE DEFAULT JUDGMENT

Now comes the plaintiff, Mr. Robert Stephens, and

hereby moves this Court, pursuant to Rules 55(c) and 60(b) of the Federal Rules of

Civil Procedure for an order removing the default judgment entered against him in the

above-captioned matter on or about December 13, 2005.

In support of this Motion the defendant states that his failure to respond or
otherwise defend or prosecute the above-captioned matter was the result of excusable
neglect for the following reasons:

1. Counsel for the plaintiff was attempting to persuade the plaintiff to hire a new attorney since early spring of 2005.
2. Counsel for the plaintiff filed the present case as he was in fear of a statute of limitations issue arising for the plaintiff.

3. Counsel in preparing the answers to interrogatories reached an impasse with the direction of the present case with the Plaintiff.
4. The communication was strained, remained strained and has totally broken down between counsel and client in an around August 2005.
5. This communication impasse has brought about a default against the Plaintiff.
6. The plaintiff is in the process of finding a new attorney, yet one has not contacted this office.
7. In the interest of finality the case deserves a better resolution pro or con than to be defaulted.
8. The Plaintiff believes in his claims and wants to pursue the claims the best he can.
9. The Plaintiff believes that other than time there will be no prejudice shown to the defendant(s) in this action by the allowance of this motion.

A supporting affidavit is attached hereto.

WHEREFORE defendant respectfully requests that this Court set aside the default judgment entered against him in this matter.

Respectfully submitted,
Mr. Robert Stephens
By his attorney,

/s/ Gregory D. Oberhauser_
Gregory D. Oberhauser
BBO No. 642209
10 George St., Suite 220
Lowell, MA 01852
978-452-1116
978-452-8199--Fax